

#### **IV. REMARKS/ARGUMENTS**

##### ***A. Generally***

The Examiner has indicated that claims 1 - 7 are pending in the application; that claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Padilla, Jr.; that claims 2 - 4 are rejected under 35 U.S.C. 103(a) as unpatentable over Padilla, Jr. in view of Vergano et al.; and that claim 5 is rejected under 35 U.S.C. 103(a) as unpatentable over Padilla, Jr. in view of Warner. Applicant, by this Amendment, hereby amends claim 1, and submits argument in support of patentability.

##### ***B. Response to Rejections Based on 35 U.S.C. § 102(b)***

The Examiner has indicated that claims 1, 6 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by the patent to Padilla, Jr.

Section 102(b) provides that “a person shall be entitled to a patent unless the invention was patented or described in a printed publication ... more than one year prior to the date of the application.” 35 U.S.C. §102(b) (2000). Accordingly, a rejection based on anticipation requires that the “four corners” of a single, prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See *Atlas Powder Co. v. Ireco, Inc.*, 190 F3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1479, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). The specification of a patent must do more than merely indicate that the disclosed device may be used to perform another function. See *Straussler v. United States*, 339 F.2d 670, 671 (Ct. Cl. 1964). The prior art reference must be enabling, thus placing the claimed invention in the possession of the public. See *Akzo N.V. v. United States Int'l Trade Comm'n*, 808 F.2d 1471, 1479 (Fed. Cir. 1986).

Padilla, Jr. discloses an intravenous site protection device formed with a rigid, elongated

top member and a rigid, elongated bottom member which are oppositely secured on a patient's extremities. Securing straps maintain the top and bottom members against the extremity of the wearer, thereby effectively immobilizing the extremity or joint.

Applicant's splint apparatus, on the other hand, provides a splint apparatus for use with intravenous therapy comprising an upper portion adapted to be positioned above a patient's limb joint, said upper portion unsecured to the patient's limb to permit flexion of the patient's limb joint; and a lower portion connected to said upper portion at an angle from 0 to 90 degrees, said lower portion including a pair of sides and a central aperture for passage of an intravenous catheter, said lower portion adapted to be positioned and secured below a patient's limb joint, wherein said upper portion permits flexion of the patient's limb joint for increased patient comfort, but prevents flexion of the patient's limb joint beyond said angle to prevent interference with the intravenous catheter and disruption of catheter flow. This novel arrangement allows the patient (human or animal) to move and flex the joint for comfort, but prevents any movement that would interfere with the IV flow, features that are not at all present in the Padilla Jr. device. Accordingly, it is respectfully submitted that claims 1 (as amended), 6, and 7 are patentable over Padilla, Jr., and such allowance is respectfully requested.

***C. Response to Rejections Based on 35 U.S.C. § 103(a)***

The Examiner has indicated that claims 2 - 4 are rejected under 35 U.S.C. 103(a) as unpatentable over Padilla, Jr. in view of Vergano et al.; and that claim 5 is rejected under 35 U.S.C. 103(a) as unpatentable over Padilla, Jr. in view of Warner. Vergano et al. was cited for teaching an angle of 30 - 45 degrees, while Warner was cited for teaching cut markings. It is respectfully submitted that applicant's amended claim 1 is now allowable, and that claims 2 -4 and 5 are now allowable as dependent upon an allowable base claim.

**V. CONCLUSION**

In view of these amendments and comments it is believed that each of the presently pending claims in this application is in condition for immediate allowance, and such allowance is therefore respectfully requested. The Examiner is invited to call Applicant's undersigned attorney if, in the opinion of the Examiner, a telephone conference will in any way expedite prosecution of this application.

Respectfully Submitted,

Date: 11-15-07



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